

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE: : CASE NO. 10-93904-BHL-11
EASTERN LIVESTOCK CO., LLC, : (Judge Basil H. Lorch III)
Debtor. :
: **OBJECTION OF THE FIRST BANK**
: **AND TRUST COMPANY TO FIFTH**
: **THIRD BANK'S MOTION TO**
: **CONTINUE HEARING**
:

The First Bank and Trust Company ("First Bank"), which entered a limited appearance to object to Fifth Third Bank's ("Fifth Third") Motion for a Protective Order [Doc. No. 2285], objects to the eleventh hour "Motion to Continue Hearing" filed at 12:55 p.m. August 15, 2013 by Fifth Third [Doc. No. 2305], and further states as follows:

1. As set forth in the Objections of only the few interested parties [Doc. Nos. 2302, 2303, 2304], Fifth Third was under order of the U.S. District Court for the Southern District of Ohio to file the Motion for a Protective Order due to that court's keen interest in whether the transcripts of evidence taken by the Trustee's Special Counsel investigating Fifth Third's conduct should all be sealed from the public's Constitutional right of access to the courts. This Court promptly set the Motion for a Protective Order for hearing with a full two week's notice to Fifth Third and interested parties.

2. In full compliance with the Court's schedule, only three Objectors filed responses. Suddenly then, Fifth Third came to the realization that its less than robust Motion for a Protective Order, with insufficient evidentiary support, could not be heard in accordance with

the Court's schedule. Although First Bank has no problem accommodating a scheduling conflict of counsel, an eleventh hour Motion to Continue Hearing should not be a vehicle for a party to gain an advantage on the filing of an ill-taken Motion for a Protective Order which did not meet the party's burden of proof upon filing.

3. The Motion for a Protective Order itself is uncomplicated; and the Objectors' briefs dispel any notion that this Court must be the one who reviews the thousands of pages of transcripts to determine the truly proprietary nature (or lack thereof) of documents designated "confidential" for purposes of facilitating discovery. Moreover, the Motion for a Protective Order, and the timing of its resolution, is important to state (and federal) court litigation against Fifth Third. For First Bank, as noted in its Objection, state court Judge Beth A. Myers was scheduled to have an initial hearing on motions to seal, among other things, the Bankruptcy Rule 2004 transcripts of evidence filed in the action before her on September 12, 2013 (now preponed to September 10, 2013). Accordingly, the simple resolution of the Motion for a Protective Order in accordance with First Bank's Objection, leaving any decision whether there is the requisite "good cause" to seal such evidence to her sound discretion, should be made prior to September 10. The current August 19 hearing date would provide this Court plenty of time to give full consideration to the Motion for a Protective Order.

4. Finally, Fifth Third's Motion for a Protective Order need not be heard as part of any Omnibus proceedings in the Eastern Livestock Co., LLC Estate. The only parties with any "direct" (or indirect) interest in the Motion for a Protective Order are Fifth Third and the three Objector groups. First Bank respectfully urges the Court to deny the Motion to Continue Hearing and to proceed on August 19, 2013 at 1:30 p.m., or at the very least on the first available date on the Court's general docket.

Respectfully submitted,

/s/ Daniel J. Donnellon

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CERTIFICATE OF SERVICE

I certify that on the 15th day of August, 2013, I electronically filed the foregoing Objection of The First Bank and Trust Company to Fifth Third Bank's Motion To Continue Hearing with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants, and I hereby certify that I have mailed by United States Postal Service the document to the non-CM/ECF participants:

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